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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,211	11/08/1999	EVA SIMMONS	000500-195	2334

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/380,211

Applicant(s)

SIMMONS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 7 – 12 and 16 – 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Roe (US 5,607,760).

Regarding claim 7, Roe discloses an absorbent article with longitudinally extending side extremities (figure 3), an absorbent body (540) disposed between a liquid-impermeable bottom sheet (530) and a liquid-permeable upper sheet (520) and at least one longitudinally extending elastic liquid barrier (550) of essentially liquid-impervious material as set forth in col. 8, lines 50 – 56 through the incorporation of Dragoo (US 4,795,454) which discloses barrier made of essentially liquid-impervious material in col. 10, lines 54 – 57. Dragoo also discloses a barrier fasted to the upper or bottom sheet along or adjacent to a respective side edge extremity of the article (col. 4, lines 39 – 47) and having a free sealing edge facing towards a wearer as set forth in figure 2. Likewise, Roe discloses an article in which at least the sealing edge is treated with a non-adhesive sealing medium which, in use, at least partly fills out any through-penetrating prose which are formed between the sealing edge and an abutment part of

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a wearer's skin and/or which, when the article is donned, smears the abutment skin part and thereby increases a liquid-skin wetting angle as set forth in col. 10, lines 18 –21 and col. 25, lines 26 – 32.

With reference to claim 8, Roe discloses the article wherein the sealing edges are coated with a sealing medium in an amount sufficient to smear the abutment part as set forth in col. 25, lines 26 – 32. Further, since the structure of Roe provides a diaper with sealing edges coated with a sealing medium that is identical to the structure as claimed by the applicant, it should be understood that the structure of Roe is considered fully capable of providing the function (i.e., sealing medium in an amount sufficient to partly fill out any pores) as claimed by the applicant.

With respect to claim 16, Schulte teaches the article wherein the sealing medium is essentially rigid and viscous at room temperature and sufficiently fluid at body temperature to smear the skin of the wearer as set forth in col. 9, line 50 to col. 10, line 17.

As to claim 17, Schulte discloses the sealing medium to be petrolatum as set forth in col. 15, lines 60 – 61.

Claims 18 and 19 are equivalent in scope to claims 7 – 8 and 16 and are included in the Roe reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 – 12 and 13 – 15, as best understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760).

As to claims 9 – 12, Schulte discloses an article with the sealing medium applied in the claimed amounts as set forth in col. 24, lines 1 – 6. While Roe states that the lotion composition is applied to the diaper topsheet in this amount, one of ordinary skill in the art would have the motivation to apply this same concept to the leg cuffs of an absorbent article because Roe discloses the use of such in col. 25, lines 26 – 32.

With reference to claims 13 – 15, the applicant has disclosed on page 14 of the specification that petrolatum is a suitable sealing medium. Roe discloses the use of petrolatum in col. 15, lines 60 – 61. It can be reasonably assumed that the petrolatum would provide a sealing member meeting the wetting angle requirements of the claimed invention. Likewise, it would be obvious that the petrolatum would provide results similar to any other sealing member disclosed by the applicant, since the applicant has acknowledged that petrolatum is a suitable ointment.

Claims 20 – 21, as best understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760) and in further view of Sivilich (US 5,669,902).

The difference between Schulte and claim 20 is the provision that the absorbent article include an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body,

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and includes apertures intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet.

Sivilich teaches an absorbent article including an essentially liquid-impermeable top sheet (30) which is intended to lie against the wearer and which includes elastic for shaping the article to the wearer's body (figure 4 and abstract) and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the topsheet as set forth in figure 4.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Roe by employing an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body, and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet because the inclusion of such retains the garment in intimate contact with the body as taught by Sivilich in col. 1, lines 63 – 67.

Similarly, the use of apertures as opposed to an aperture would have been an obvious modification since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Roe provides the general concept of providing lotion on the elastic edges that come into contact with the wearer's skin in order to alleviate chafing and provide improved containment. Therefore, it would have been obvious to one of ordinary skill in

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the art to coat any elastic member that comes into contact with the wearer's skin with the composition as taught by Schulte.

As to claim 21, see the rejection of claim 8.

Response to Arguments

Applicant's arguments filed July 15, 2002 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Roe does not teach a sealing medium which is typically hydrophobic and which provides an increase in liquid-skin wetting angle, the examiner refers to col. 15, lines 60 – 61. Roe discloses petrolatum as a preferred emollient. This emollient, according to page 16, lines 21 – 24 of the applicant's specification, increases the liquid-skin wetting angle.

The applicant argues that Roe teaches away from the claimed invention because Roe wants to promote the transfer of liquids while the applicant seeks to prevent leakage. Even though, it is noted that the features upon which applicant relies (i.e., the prevention of leakage) are not recited in the rejected claim(s) and limitations from the specification are not read into the claims, the examiner contends that Roe's intention to promote the transfer of liquids is expressly stated with respect to the topsheet. Roe states that the hydrophilic surfactant used with the lotion compositions of the present invention is optional (col. 10, lines 34 – 39). Roe also states that it is highly desirable that the diaper topsheet is made of a hydrophilic material to promote rapid transfer of

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liquids through the topsheet (col. 21, lines 40 – 42) and that petrolatum requires the addition of a hydrophilic surfactant when used to treat the diaper topsheet.

Roe states that the leg cuffs of the present invention are elasticized (col. 8, lines 50 – 56) and incorporates the Dragoo reference to illustrate a configuration in which the leg cuffs may be formed. As recited in the rejection of claim 1, Dragoo discloses leakage-resistant (title), impermeable leg cuffs as set forth in col. 10, lines 53 – 57. Further, it is well known in the art that an article is provided with leg cuffs specifically for the purpose of providing a better fit along the legs of a wearer in order to prevent leakage, not promote it.

The examiner maintains that Roe discloses leakage-resistant, impermeable leg cuffs that are treated with a non-adhesive sealing medium (petrolatum) which smears a part of the wearer's skin and increases the liquid-skin wetting angle.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

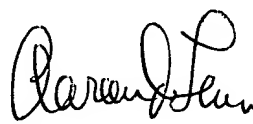
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.



Michele Kidwell
August 16, 2002



Aaron J. Lewis
Primary Examiner